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UNITED STATES  
JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION  
NORTHERN DISTRICT OF CALIFORNIA

Apr 08, 2008

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ATTEST  
By April Layne on Apr 08, 2008

FOR THE UNITED STATES  
JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION

UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION

IN RE: VYTORIN/ZETIA MARKETING, SALES  
PRACTICES AND PRODUCTS LIABILITY  
LITIGATION

MDL No. 1938

TRANSFER ORDER

**Before the entire Panel:** Plaintiffs in eleven actions have submitted five motions,<sup>1</sup> pursuant to 28 U.S.C. § 1407, for centralization of a total of 33 actions. No responding party opposes centralization, but there is disagreement over the selection of a transferee forum. Moving and responding plaintiffs variously support centralization in the following districts: the Northern District of California, the District of Colorado, the Middle District of Florida, the Eastern District of Louisiana, the District of Minnesota, the Southern District of Mississippi, the Eastern or Western District of Missouri, the District of New Jersey, the Southern District of New York, or the Northern District of Ohio. Responding defendants<sup>2</sup> support centralization in the District of New Jersey.

This litigation currently consists of 33 actions listed on Schedule A and pending in seventeen districts as follows: twelve actions in the District of New Jersey, three actions in the Northern District of California, two actions each in the District of Kansas, the Northern District of Mississippi, the Southern District of New York, and the Northern District of Ohio, and one action each in the Eastern District of California, the District of Colorado, the Middle District of Florida, the Southern District of Florida, the Eastern District of Louisiana, the District of Minnesota, the Eastern District of New York, the Southern District of Ohio, the Eastern District of Pennsylvania, and the District of Puerto Rico.<sup>3</sup>

<sup>1</sup> Judges Heyburn, Motz and Scirica did not participate in the disposition of this matter.

<sup>2</sup> Although additional submissions styled as "motions" were submitted to the Panel, they were docketed as responses in accordance with Panel Rule 7.2(h). See Rule 7.2(h), R.P.J.P.M.L., 199 F.R.D. 425, 434 (2001).

<sup>3</sup> Merck/Schering-Plough Pharmaceuticals; Merck & Co., Inc. (Merck); Schering-Plough Corp. (Schering-Plough); Schering Corp.; Schering-Plough Biopharma; Schering-Plough Healthcare Products, Inc.; Schering-Plough Healthcare Products Sales Corp.; Merck Sharp & Dohme (Italia) S.P.A.; MSP Singapore Co., LLC; and MSP Technology Singapore PTE, Ltd.

<sup>3</sup> In addition to the 33 actions now before the Panel, the parties have notified the Panel of 67 related actions pending in various districts across the country. These actions and any other related actions

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On the basis of the papers filed and hearing session held, we find that these 33 actions involve common questions of fact, and that centralization under Section 1407 in the District of New Jersey will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. All actions share factual questions concerning allegations relating to the use and/or marketing of the drugs Vytorin and/or Zetia. Centralization under Section 1407 will eliminate duplicative discovery; prevent inconsistent pretrial rulings, including those with respect to certification of class actions; and conserve the resources of the parties, their counsel and the judiciary.

We are persuaded that the District of New Jersey is an appropriate transferee forum for this litigation. Because Merck and Schering-Plough have their corporate headquarters within the District of New Jersey, relevant discovery may be found there. In addition, transfer to this district enjoys the support of defendants and several plaintiffs.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, the actions listed on Schedule A and pending outside the District of New Jersey are transferred to the District of New Jersey and, with the consent of that court, assigned to the Honorable Dennis M. Cavanaugh for coordinated or consolidated pretrial proceedings with the actions pending there and listed on Schedule A.

*I certify that the above and  
copying is a true and correct copy of  
the original on file in my office*

ATTEST:

WILLIAM T. WALSH, Clerk  
United States District Court  
District of New Jersey

By ... JOHN ICKLAN  
*Deputy Clerk*

PANEL ON MULTIDISTRICT LITIGATION



D. Lowell Jensen  
Acting Chairman

John G. Heyburn II, Chairman  
Robert L. Miller, Jr.  
David R. Hansen

J. Frederick Motz  
Kathryn H. Vratil  
Anthony J. Scirica

will be treated as potential tag-along actions. See Rules 7.4 and 7.5, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001).

**IN RE: VYTORIN/ZETIA MARKETING, SALES  
PRACTICES AND PRODUCTS LIABILITY  
LITIGATION**

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**SCHEDULE A**

Eastern District of California

George Artenstein v. Merck & Co., Inc., et al., C.A. No. 2:08-152

Northern District of California

Richard Haskin v. Merck & Co., Inc., et al., C.A. No. 3:08-376  
ASEA/AFSCME Local 52 Health Benefits Trust, et al. v. Merck & Co., Inc., et al.,  
C.A. No. 3:08-531  
Helen Aronis v. Merck & Co., Inc., et al., C.A. No. 4:08-352

District of Colorado

Ronna Dee Kitsmiller, et al. v. Merck & Co., Inc., et al., C.A. No. 1:08-120

Middle District of Florida

Marion J. Greene v. Merck & Co., Inc., et al., C.A. No. 3:08-69

Southern District of Florida

Sam A. Ciotti v. Merck & Co., Inc., et al., C.A. No. 0:08-60077

District of Kansas

Charles Swanson, et al. v. Merck & Co., Inc., et al., C.A. No. 2:08-2040  
John P. Dudley v. Merck & Co., Inc., et al., C.A. No. 6:08-1027

Eastern District of Louisiana

RoseAnn S. Flores v. Merck & Co., Inc., et al., C.A. No. 2:08-674

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**MDL No. 1938 Schedule A (Continued)**

**District of Minnesota**

Jody Fischer v. Merck & Co., Inc., et al., C.A. No. 0:08-203

**Northern District of Mississippi**

Susan McCulley v. Merck & Co., Inc., et al., C.A. No. 2:08-16

Lisa Mims v. Merck & Co., Inc., et al., C.A. No. 4:08-10

**District of New Jersey**

Rita Polk v. Schering-Plough Corp., et al., C.A. No. 2:08-285

Jay Klitzner v. Schering-Plough Corp., et al., C.A. No. 2:08-316

Sandra Weiss v. Schering-Plough Corp., et al., C.A. No. 2:08-320

Lionel Galperin v. Merck & Co., Inc., et al., C.A. No. 2:08-349

Robert J. McGarry v. Merck & Co., Inc., et al., C.A. No. 2:08-350

Charles D. Maurer, et al. v. Schering-Plough Corp., et al., C.A. No. 2:08-393

Daniel A. Brown v. Merck & Co., Inc., et al., C.A. No. 2:08-395

Steven Knight v. Merck & Co., Inc., et al., C.A. No. 2:08-396

Ken W. Bever v. Schering-Plough Corp., et al., C.A. No. 2:08-430

David DeAngelis v. Schering-Plough Corp., et al., C.A. No. 2:08-431

Ciro Verdi, et al. v. Schering-Plough Corp., et al., C.A. No. 2:08-432

Marilyn Woodman v. Schering-Plough Corp., et al., C.A. No. 2:08-437

**Eastern District of New York**

Sigmund Tomaszewski v. Merck & Co., Inc., et al., C.A. No. 1:08-258

**Southern District of New York**

Joyce B. Rheingold, et al. v. Merck & Co., Inc., et al., C.A. No. 1:08-438

Stanley Levy, et al. v. Merck & Co., Inc., et al., C.A. No. 1:08-491

**Northern District of Ohio**

Theodore Sahley v. Merck & Co., Inc., et al., C.A. No. 1:08-153

Panayiotis Balaouras v. Merck & Co., Inc., et al., C.A. No. 1:08-198

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**MDL No. 1938 Schedule A (Continued)**

Southern District of Ohio

Dennis Kean v. Merck & Co., Inc., et al., C.A. No. 2:08-61

Eastern District of Pennsylvania

Fred Singer v. Merck & Co., Inc., et al., C.A. No. 2:08-331

District of Puerto Rico

Alexis Alicea-Figueroa, et al. v. Merck & Co., Inc., et al., C.A. No. 3:08-1099